

1 UNITED STATES BANKRUPTCY COURT
2 WESTERN DISTRICT OF NEW YORK

3 IN RE:

4 NIAGARA FRONTIER HOCKEY, LLP,

BK #03-10210

5 Debtor.

6
7
8 Proceedings held before the
9 HONORABLE MICHAEL J. KAPLAN, United States
10 Bankruptcy Court Judge, taken in Suite 350, Part I
11 of the courthouse at the OLYMPIC TOWERS, 300 Pearl
12 Street, Buffalo, New York, on March 30, 2004,
13 commencing at 10:08 A.M.
14
15

16 APPEARANCES: NIXON PEABODY, LLP,
17 BY: WILLIAM S. THOMAS, ESQ.,
Clinton Square, P.O. Box 1051,
18 Rochester, New York 14603,
Appearing for the Debtor.
19
HANCOCK & ESTABROOK, LLP,
20 BY: CAMILLE HILL, ESQ.,
1500 MONY Tower I, P.O. Box 4976,
21 Syracuse, New York 13221-4976,
Appearing for Creditors' Committee.
22
ZDARSKY, SAWICKI & AGOSTINELLI,
23 BY: MARK J. SCHLANT ESQ.,
404 Cathedral Place,
24 298 Main Street,
Buffalo, New York,
25 Appearing for Fleet Bank.

1 PHILLIPS, LYTLE, HITCHCOCK,
2 BLAINE & HUBER,
3 BY: WILLIAM J. BROWN, ESQ.,
3400 HSBC Center,
Buffalo, New York,
4 Appearing for the HSBC Bank.

5 UNDERBERG & KESSLER, LLP,
6 BY: JANE F. CLEMENS, ESQ.,
1900 Main Place Tower,
Buffalo, New York,
7 Appearing for Hockey Western
New York.

8 HODGSON RUSS, LLP,
9 BY: CHERYL R. STORIE, ESQ.,
1300 Guaranty Building,
Buffalo, New York,
10 Appearing as special counsel
11 to the Committee.

12 APPEARING TELEPHONICALLY:

13 WILKIE FARR & GALLAGHER, P.C.,
14 BY: ROGER NETZER, ESQ.,
Appearing for Adelpia debtors.

15 SALOMON, GREEN & OSTROW,
16 BY: CHESTER SALOMON, ESQ.,
and JOCELYN KEYNES, ESQ.,
Appearing for Key Bank.

17 KASOWITZ, BENSON, TORRES
& FRIEDMAN, LLP,
18 BY: DANIEL ZINMAN, ESQ.,
19 Appearing for Adelpia
Creditors Committee.

20 PRESENT: BARBARA BUYERS, CSR, RPR,
21 Court Reporter.

22 THE COURT: Let's note the
23 appearances in the courtroom, please.

24 MR. THOMAS: William
25 Thomas, Nixon Peabody, for the debtors.

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1 MR. BROWN: William J.
2 Brown, Phillips Lytle, for HSBC Bank.

3 MR. SCHLANT: Mark Schlant,
4 Zdarsky, Sawicki & Agostinelli, for Fleet
5 National Bank.

6 MS. CLEMENS: Jane Clemens,
7 Underberg & Kessler, for Hockey Western New
8 York.

9 THE COURT: That was Ms.
10 Clemens for Hockey Western New York. She's not
11 near a microphone.

12 MS. HILL: Camille Hill,
13 Hancock & Estabrook, for the official creditors'
14 committee, to the extent that the issues do not
15 deal with the HSBC Bank.

16 THE COURT: That was
17 Camille Hill of counsel to the creditors'
18 committee here.

19 MS. STORIE: Cheryl Storie,
20 Hodgson Russ, special counsel to the committee
21 insofar as it concerns HSBC's claim.

22 THE COURT: Thank you.
23 Ms. Storie for HSBC -- I'm sorry, for --

24 MS. STORIE: Special
25 counsel to the committee.

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1 THE COURT: Special
2 counsel to the committee.

3 The reporter thought we were just
4 finding out who was on the phone.

5 MR. NETZER: Roger Netzer
6 from Wilkie Farr on behalf of Adelphia.

7 THE COURT: Thank you.
8 Mr. Zinman?

9 MR. ZINMAN: Dan Zinman
10 from Kasowitz, Benson, Torres & Friedman, on
11 behalf of the Adelphia creditors' committee.

12 THE COURT: Thank you.
13 And either Mr. Salomon or Ms. Keynes?

14 MR. SALOMON: Chester
15 Salomon and Jocelyn Keynes for Key Bank. We're
16 with Salomon, Green & Ostrow.

17 THE COURT: Thank you.
18 Okay. Mr. Thomas?

19 MR. THOMAS: Your Honor,
20 just for housekeeping, a couple details. As we
21 previously said and with the consent of the
22 parties, a separate motion to submit a
23 stipulation and agreed order, and a motion made
24 by HSBC, have both been adjourned without
25 prejudice at the time of the pretrial later

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1 today. The parties have agreed we will set up a
2 date when those things --

3 THE COURT: Let me, for
4 the minutes, because we have so many matters
5 showing up on the docket today, for the minutes,
6 let me be specific as to what those matters
7 were, by document number, if I have the document
8 numbers.

9 So we have here the HSBC Bank
10 motion, which is -- here it is. It's a motion
11 dated March 22nd. It was received here March
12 the 23rd. I don't have a document number, and
13 it was a motion by HSBC Bank returnable today at
14 ten for an order enforcing Section 7 dot 06 of
15 the plan and certain other relief. So that
16 motion, which I believe resulted in at least one
17 opposing document, is by the debtors, has been
18 adjourned and will make a further order on that
19 later?

20 MR. THOMAS: That's part of
21 the pretrial, Your Honor. That was part of the
22 agreement of the parties, if that's all right
23 with you.

24 THE COURT: The other was
25 the motion by the debtors to approve a

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1 stipulation with certain Adelphia parties. This
2 motion is document number twelve, and that would
3 be to approve a stipulation and agreed order
4 that, among other things, would dismiss out the
5 Adelphia parties from AP 03 dash 1292.

6 Obviously, that motion is not compatible with
7 HSBC's motion and perhaps some other -- now
8 Mr. Schlant, you had a motion to intervene in
9 that AP.

10 MR. SCHLANT: Yes.

11 THE COURT: Is that also
12 being adjourned?

13 MR. SCHLANT: I had not been
14 asked to do it. I have not received any
15 opposition. I assumed it was going forward
16 today.

17 THE COURT: It was a
18 document consenting and joining from HSBC, from
19 Mr. Brown. Is that going forward today,
20 Mr. Thomas?

21 MR. THOMAS: I believe so.
22 The debtor has no objection to that.

23 THE COURT: Okay. Hold on
24 a minute, then. Let me find that. Let me see
25 if I can help make the minutes straight on that.

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1 Okay. It's document number fifteen is the
2 motion by Fleet for leave to intervene in the
3 AP.

4 There subsequently was received,
5 on March the 25th, a consent and joinder of HSBC
6 in that motion. The debtor does not oppose. Is
7 there anyone else who wishes to be heard in
8 connection with that motion?

9 MR. ZINMAN: Your Honor,
10 Dan Zinman from Kasowitz, Benson, Torres &
11 Friedman. We have no opposition to the motion
12 to intervene except to say that there were
13 certain allegations made in there that might
14 conceivably have some impact on jurisdictional
15 questions and we reserve the right to dispute
16 those allegations at the appropriate time.

17 THE COURT: Fine.
18 Anything else? Then the motion to intervene is
19 granted. You may submit the order, Mr. Schlant.

20 MR. SCHLANT: Thank you.
21 All right.

22 MR. THOMAS: Now, the
23 matter remaining on the calendar, Your Honor, is
24 the motion made March 19th by the debtor for
25 authorization and direction to disburse funds

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1 from the segregated account.

2 THE COURT: Okay. Hold on
3 a minute, because there's one other matter that
4 is housekeeping, and I do want to get it behind
5 us.

6 There is a couple of adjourned
7 claims objections on, Fiesta, Latina & Atwood.
8 We received a note from Mr. Mascitti that those
9 had been settled. Would there be orders to be
10 submitted?

11 MR. THOMAS: Yes. We will
12 be submitting orders, Your Honor.

13 THE COURT: Mark those
14 settled, please. Those were -- can you tell
15 from this whether there were others besides
16 those two that were on?

17 CHRISTINE KLIMKO: I think there
18 were just those two.

19 THE COURT: I'll give you
20 the claim numbers, then. Fiesta, Latina &
21 Allwood, not Atwood. And those are claims 109
22 and 271. So those are settled and the orders
23 are to be submitted.

24 MR. THOMAS: I'm also
25 pleased to inform the Court that all of the

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1 claims that were subject to the first objection,
2 the second objection have, in fact, been
3 resolved and there are no outstanding claims
4 objections that have not already been settled,
5 merely pending submission of an order.

6 THE COURT: Good. Thank
7 you. Now again, to make sure that we're all on
8 the same page, Mr. Thomas is saying that what is
9 still on right now is a document that has been
10 assigned, document number 425, it is the notice
11 of motion by the debtors and debtors-in-
12 possession for authorization and direction to
13 disburse funds from a segregated account.

14 Now, that motion elicited some
15 other-filed documents. One is the reply of HSBC
16 Bank, USA, to that motion. I don't have a
17 document number, because I have only a chambers
18 copy, either that or it was e-filed and it would
19 not necessarily come to me with a document
20 number. It was dated March 29, 2004. It was
21 e-filed by Mr. William Brown.

22 Then I received a similar response
23 from Key Bank and its counsel, Mr. Salomon and
24 Ms. Keynes, which references the HSBC response,
25 and then I received a somewhat similar response

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1 from Fleet through its local counsel,
2 Mr. Schlant.

3 Let me just make sure that that's
4 everything in connection -- then I received the
5 debtor's response to the HSBC reply. That was
6 just handed up today. I don't have a document
7 number on that. That was dated March 29. I
8 think that's everything I have.

9 MR. THOMAS: It's
10 everything I've been served with, Your Honor.

11 THE COURT: Anybody think
12 I'm missing something? Okay. All right.

13 I've read all the papers. The
14 nature of the HSBC objection is -- it is limited
15 and it's such as to oppose the segregation
16 unless there is something in the nature of a
17 credit given to HSBC; a credit up to the one
18 point six million.

19 It was a credit that, according to
20 Mr. Brown's papers, HSBC requested directly from
21 the Adelpia parties. It was not obtained
22 consensually, and HSBC opposes the distribution
23 of the segregated account unless it is, by order
24 of the Court, given a credit. The debtor's
25 response to that objection argues that that

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1 would be premature. It's a two-party dispute,
2 in the debtor's view, between the Adelphia
3 entities and HSBC.

4 The Key Bank response was very
5 similar to the HSBC Bank response, and sought a
6 similar form of relief. The Fleet was somewhat
7 different. Mr. Schlant?

8 MR. SCHLANT: Your Honor, I
9 believe, if anything, the difference is just at
10 the end of the document, we did not say that we
11 oppose it unless it comes with a credit. But in
12 the document, we've said that.

13 THE COURT: Okay.

14 MR. SCHLANT: We're taking
15 the same position. Some of our legal arguments
16 are a little additional or different, but we are
17 asking for the same thing.

18 THE COURT: Okay. Thank
19 you.

20 MR. BROWN: Your Honor,
21 it's a contingent credit, and I think that's
22 the --

23 THE COURT: Oh, it's a
24 continuing credit.

25 MR. BROWN: Contingent.

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1 It effectively is a contingent credit because it
2 bears the outcome of the proceeding.

3 THE COURT: Okay. I sense
4 that that may have been lost on the debtor's
5 counsel, because they came back arguing that
6 it's premature.

7 MR. BROWN: Well, it's
8 only if. It's only to the extent that there is
9 a recovery in the so-called Adelphia AP.

10 MR. THOMAS: Let me just
11 address that.

12 THE COURT: So the other
13 extent to which I thought Fleet papers were
14 different, apparently the Fleet papers came in
15 after -- well, I'm not quite sure whether they
16 came in after the debtor's reply to the HSBC
17 papers or not, but the Fleet papers purport to
18 make an argument that HSBC and Key do not argue,
19 but I don't know -- and that has to do with what
20 Fleet believes are independent rights to pursue
21 these debtors; not rights that would be
22 derivative of a judgment in favor of Adelphia.
23 I don't know whether Fleet is situated
24 differently in that regard from HSBC and Key or
25 not.

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1 MR. BROWN: That's raised
2 in footnote three of the HSBC reply.

3 THE COURT: Okay.

4 MR. BROWN: We share the
5 same type of club provisions that are direct
6 claims against these debtors.

7 THE COURT: Okay. So I
8 think that that is the capsuled description of
9 the issues that have been joined before me this
10 morning. Mr. Thomas?

11 MR. THOMAS: Yes, Your
12 Honor. Just in fairness to all the parties,
13 attached to our response is a proposed order and
14 what we're really talking about here, to a
15 certain extent, is settling an order that I
16 believe all of the parties, including the banks
17 and the Adelpia debtors and others, are in
18 favor of these funds being distributed to the
19 relatively minor creditors, so that they can be
20 paid as Mr. Golisano intended when he executed
21 the purchase agreement.

22 THE COURT: The order
23 recites that there's been no opposition. Was
24 that --

25 MR. THOMAS: I circulated

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1 this around to everybody and hope springs
2 eternal that perhaps people would agree.
3 Certainly, I'll have to -- the reason I haven't
4 brought an order with me today was that I would
5 have to put in all these various objections.

6 The debtor's view, and to a
7 certain extent this is a discussion that has to
8 take place between the banks and the Adelphia
9 people as well. In my attempt to broker a deal,
10 the debtor's position was until the litigation
11 in the Adelphia Sabres matter is resolved, these
12 claims are not only unsecured non-priority and
13 contingent, they're hotly disputed.

14 Each of the banks maintain that
15 they do not, in fact, owe any of this money.
16 HSBC has been sued for twelve point six million,
17 Key's been sued for four point seven million and
18 Fleet's been sued for thirty point five million.

19 If they were successful, I don't
20 believe there's any objection that their rights
21 would share pro rata, with the exception of some
22 adjustment in regard to the concession loan,
23 which is a matter involving Fleet only. The
24 debtor's sole condition is it was a precondition
25 to any of these claims being asserted against

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1 this estate that a judgment has to be awarded in
2 the Adelpia AP or in the AP that is pending
3 before this Court, and therefore, we believe
4 that whatever relief any of these banks are
5 entitled to can be given in respect of the award
6 at that time by that Court, and therefore,
7 remember, keep in mind that what we're really
8 talking about is that the million six will leave
9 the jurisdiction of this court, be distributed
10 to creditors. So the only question is, are the
11 banks prejudiced by the release of those funds.

12 The debtor's position is that if,
13 in fact -- since, in fact, they are not
14 presently liable and could potentially only be
15 liable, the only risk that they run which this
16 Court can resolve by entering an order is to say
17 that if it's determined, for example, that HSBC
18 were liable for ten million dollars and HSBC
19 establishes a right to a setoff, the million six
20 can be deducted, or its pro rata share, from the
21 award and therefore, HSBC is at no risk until
22 that point.

23 This money need not be held up
24 because all the banks will have available to it,
25 through either the Adelpia AP or the Sabres AP,

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1 complete and total relief before that court at
2 that time.

3 That's consistent with our view
4 that the Adelphia debtors have agreed, number
5 one, in the stipulation that we've submitted to
6 the Court that they continue to be bound by the
7 stipulation and the order, and it's our view
8 that that stipulation and order runs with the
9 land, as it were. It runs with those
10 obligations.

11 So for example, if a debtor were
12 to sue somebody over the transfer of a piece of
13 property and after the transfer occurred, the
14 property was polluted, then it was an attempt to
15 return it, there would be an offset generated.
16 It would be either an affirmative defense, a
17 counterclaim or an offset. And the court
18 handling the particular adversary proceeding
19 could work that out completely.

20 That said, our goal, and I believe
21 the goal of the new Sabres, is to distribute
22 these funds to the smaller creditors as quickly
23 as possible. If I were able to draft a more
24 detailed way to deal with the setoff issue or
25 non-setoff issue, I would have done that. I'm

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1 nervous as to what I would do, at the end of the
2 day, what we would merely ask this Court is
3 certainly to preserve and protect all of the
4 claims, defenses, offsets of the bank; all of
5 the claims, offsets and defenses of the Adelpia
6 debtors and simply allow us to distribute these
7 funds and move towards wrapping up that aspect
8 of the case. Thank you, Your Honor.

9 THE COURT: Okay.

10 Mr. Brown?

11 MR. BROWN: I guess I'd
12 ask first, Your Honor, if there's anybody else
13 speaking in support.

14 THE COURT: In favor?

15 Sure.

16 MR. BROWN: Of the
17 debtor's motion.

18 THE COURT: Could I hear
19 argument to those in support? Ms. Storie?

20 MS. STORIE: Your Honor,
21 simply on behalf of our special counsel, again
22 appearing on behalf of the committee in a
23 special counsel capacity, solely with respect to
24 the HSBC claim, that constituency supports the
25 debtor's motion and asks that the Court grant it

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1 over the objections of HSBC.

2 THE COURT: Thank you.
3 Ms. Hill, as to the matters that do not pertain
4 to HSBC?

5 MS. HILL: Yes, Your
6 Honor. I believe the Court is aware of our
7 position with regard to the committee --

8 THE COURT: I had
9 forgotten it when we began, but then when Miss
10 Storie spoke, I remembered it.

11 MS. HILL: We're speaking
12 solely to those matters that do not impact HSBC
13 and we do not take a position in regard to those
14 matters. However, we're in a capacity
15 representing the trade vendors and the small
16 creditors Mr. Thomas alluded to would like to
17 get paid. And to that extent, we do support the
18 debtor's motion so we have those creditors paid
19 from this fund at this time.

20 THE COURT: Thank you.
21 Miss Clemens?

22 MS. CLEMENS: On behalf of
23 Hockey Western New York, Hockey Western New York
24 fully supports the debtor's motion, ask the
25 Court to enforce the purchase agreement and the

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1 original intent of the purchase transaction and
2 permit the distribution to the creditors,
3 reserving the bank's rights later to dispute
4 credits or offsets. Thank you.

5 THE COURT: Thank you.
6 And is there anyone participating by phone who
7 would support the debtor's proposal?

8 MR. ZINMAN: Adelphia
9 supports it.

10 THE COURT: Thank you.
11 Then since I know that I had limited opposition
12 from Key Bank, HSBC and Fleet Bank, let me turn,
13 now, to their positions. Mr. Brown?

14 MR. BROWN: Thank you,
15 Your Honor. What brought havoc to this case,
16 this Chapter 11 case pending before Your Honor
17 was, no one, other than Adelphia and its
18 creditors' committee, having fully participated
19 in the Chapter 11 case before Your Honor, and
20 Adelphia having been involved in the
21 negotiations leading to the sale, and in fact at
22 the sale hearing, which I suspect Mr. Schlant
23 will address in greater detail, in fact
24 negotiated and paid one of the three loans in
25 dispute, the concession loan and thereafter,

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1 after the sale in the following summer,
2 commences an adversary proceeding seeking to
3 recover payments made not only on the
4 construction loan made to the Knox brothers
5 essentially in 1995, but the concession loan to
6 which Adelphia consented to be paid out in full
7 in April, 2003. And the payoff balance
8 presumably taking into account the installment
9 payments that Adelphia and its creditors --

10 THE COURT: Back up.

11 Adelphia permitted who to pay off what?

12 MR. BROWN: As part of the
13 NFHLP sale process, the team was sold in a
14 generic fashion.

15 THE COURT: Right.

16 MR. BROWN: The arena down
17 the street was sold, and many other assets.

18 THE COURT: Yes.

19 MR. BROWN: And we
20 thought, and Your Honor knew that we thought
21 Western New York and Southern Ontario had
22 benefitted by a transaction in which old and new
23 Sabres participated, the National Hockey League,
24 Adelphia appeared before Your Honor, both by New
25 York City counsel and by local counsel,

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1 Mr. Lawson.

2 There were joint jurisdictional
3 stipulations and orders entered by yourself and
4 Judge Gerber in January and February of that
5 year that essentially said we will not allow
6 there to be dueling bankruptcies. We will allow
7 Adelphia to come to Judge Kaplan's court to deal
8 with all issues relating to the Sabres and the
9 related assets. And based upon that transaction
10 in April, 2003, one of the disputes lingering on
11 the sale hearing date was whether the concession
12 loan, made in 1995, had to be paid off in full.

13 We, on the one hand, were opposing
14 the assumption of that loan. And as part of the
15 sale process, Adelphia and the old Sabres and
16 the old CALLC agreed that that loan would be
17 paid off in full and we arrived at and agreed
18 upon a payoff amount.

19 Presumably, that payoff amount
20 included the installment payments that Adelphia
21 and its creditors' committee now seek to
22 recover.

23 So was the payoff balance
24 incorrectly agreed to? It would appear so, from
25 Adelphia's point of view after having allowed

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1 Your Honor to enter an order which has become
2 final. At no time during the pendency of the
3 NFHLP and CALLC and associated cases, was there
4 ever an assertion, wink and nod, innuendo that
5 there was anything wrong or anything to be
6 pursued about the recovery of payments made
7 since 1995 through the history of those loans
8 originally made to the Knox brothers when they
9 were owners of the team. And there's no
10 question there's a hundred and twenty-million-
11 dollar arena down the street constructed with
12 those monies.

13 Focusing on NFHLP's reply
14 essentially to HSBC -- which is essentially a
15 reply to Fleet and Key, because the issues are
16 the same or very similar -- there's still no
17 objection filed to the HSBC or Key Bank claims.
18 There has been no objection filed.

19 THE COURT: Procedurally,
20 there's been an adversary proceeding commenced
21 seeking, among other things, to subordinate any
22 such claims.

23 MR. BROWN: That's right.
24 It's not characterized that way. It's
25 characterized a declaratory judgment to declare,

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1 essentially, that what was done among the old
2 Sabres, Adelphia and other parties, not
3 including the banks, is binding on the banks.
4 But as Your Honor knows, if you wish to oppose a
5 subordination, Rule 7001 requires an adversary
6 proceeding and notice.

7 We have a fundamental due process
8 issue here, and unfortunately, while HSBC and
9 the other banks have proposed a way to allow
10 what we call the little creditors to be paid by
11 the allowance of a contingent credit in the
12 amount of the segregated fund, that,
13 consensually, has not been achieved.

14 But going back is a significant
15 due process issue. The declaratory judgment
16 filed by NFHLP is not the form they're
17 seeking -- that they're attempting to use to
18 affect a distribution which would be the correct
19 procedural posture in which to do this, because
20 the banks are entitled to have the due process
21 attributes of an adversary proceeding for the
22 imposition of a subordination or any declaration
23 that is binding, not motion practice.

24 The hanky panky, in my view,
25 that's been brought to this court or been

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1 brought to the larger situation has been caused
2 by out-of-town parties and I'm concerned, as a
3 matter of practice, that the view somewhat by
4 Adelphia and its creditors' committee continues
5 to be that it doesn't matter what Judge Kaplan
6 ruled; we can bring claims related to what that
7 court did and in fact, including payments that
8 were made under an April, 2003 order, and that
9 type of practice I don't think is the practice
10 that's been condoned in any federal court that I
11 know of, knowingly, and I would hope it would
12 not be condoned here.

13 The Adelphia got its consideration
14 that it wanted and negotiated for in the sale of
15 the Sabres and the arena. It included such
16 things as getting off of a very expensive letter
17 of credit and other obligations that existed; it
18 got off of the obligation to continue to fund
19 the team, it got a new T.V. contract and a
20 number of other things. It decided how it was
21 going to negotiate for the sale. I just view
22 this as a bad lesson to teach.

23 Mr. Thomas' arguments that the
24 clawbacks are not applicable here are an
25 evidentiary issue.

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1 THE COURT: Clawback,
2 C-L-A-W-B-A-C-K.

3 MR. BROWN: The documents
4 have express provisions, and if NFHLP wants to
5 litigate what those agreements either mean or
6 don't mean, the context to do that is in the
7 adversary proceeding that was brought by NFHLP
8 and to which this issue should be adjudicated.
9 Without taking the exact provisions of those
10 agreements is not an appropriate way to decide
11 that issue. And Mr. Thomas really has not
12 addressed the contractual provisions. He
13 surmises that we only stand in the shoes of
14 Adelphia, which is plainly wrong based upon the
15 documents.

16 Additionally, the NFHLP plan in
17 Article 7 provides for a disputed claims fund
18 and right now, the banks believe we're entitled
19 to that right unless there's a consensual
20 resolution allowing the contingent credit or we
21 litigate the issues appropriately in the NFHLP
22 proceeding. Thank you.

23 THE COURT: Thank you.
24 Mr. Schlant?

25 MR. SCHLANT: Thank you,

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1 Your Honor. Your Honor, on behalf of Fleet, I
2 don't want to go too much over the things that
3 Mr. Brown has already said. I completely agree.

4 THE COURT: Let the record
5 reflect that I do have a present recollection of
6 our previous hearing in which the -- in which
7 everyone seemed to agree that there's no dispute
8 that the Fleet claims -- that Fleet never, in
9 connection with the Sabres, ever did business
10 with Adelphia, as I recall. And the Fleet loans
11 were to the previous owners, to the Knoxes, and
12 that those loans were simply assumed by the
13 Rigas -- or by the Sabres when they were
14 acquired by Regas entities, and all Fleet ever
15 did was receive payments in the ordinary course;
16 is that right?

17 MR. SCHLANT: Well, I want
18 to make sure I understand. There were three
19 loans.

20 THE COURT: Yes.

21 MR. SCHLANT: They were
22 originally with the Knox group.

23 THE COURT: Yes.

24 MR. SCHLANT: Two of them
25 were purchased by a Sabres -- or by an Adelphia

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1 entity called Sabres, Inc. in the year 2000.

2 One of them, the concession loan --

3 THE COURT: Wait a minute.

4 Let's be clear, though. We've lapsed, since the
5 revelations about the Regas -- the alleged Regas
6 improprieties emerged and since the filing of
7 the Chapter 11s regarding various Adelphia
8 entities in the Southern District, we've begun
9 to lapse into a somewhat sloppy practice of
10 recognizing, I guess, that Adelphia has asserted
11 equitable or beneficial claims of ownership of
12 the entities, and the assets of the entities
13 that are debtors here, but you just said that
14 those loans were assumed by Adelphia entities;
15 they weren't. They were assumed --

16 MR. SCHLANT: It was an

17 entity called Sabres, Inc.

18 THE COURT: Right. They

19 were assumed by entities that are debtors here
20 which have become the subject of Adelphia
21 claims; is that right?

22 MR. BROWN: Your Honor, in

23 1995, the only --

24 THE COURT: Why don't you

25 come up to the podium, so that you can be heard

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1 to the people on the speaker phone.

2 MR. BROWN: I'll just lay
3 a factual predicate, proffer, if you will, to
4 the Court.

5 THE COURT: Yes.

6 MR. BROWN: Miss Clemens
7 is here and can vouch if I'm right or wrong.

8 In 1995, the what is now known as
9 the HSBC Arena, was constructed with two primary
10 loans. The first was the construction loan for
11 the obvious purposes of bricks and mortar.
12 HSBC, Key Bank and eventually what is Fleet
13 Bank, were the co-lenders in that loan. They
14 had an initial principal balance of thirty-five
15 million dollars. And that, among other monies,
16 public and private, constructed the HSBC Arena.
17 That loan was secured by essentially a first
18 mortgage lien on all of the assets, with some
19 limited exceptions.

20 The second loan --

21 THE COURT: Give me one
22 moment. Off the record, please.

23 (Discussion off the record.)

24 THE COURT: On the record.
25 In 1995, Crossroads Arena, LLC --

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1 MR. BROWN: Better known
2 as CALLC.

3 THE COURT: CALLC borrowed
4 from HSBC and Key to construct the arena, up to
5 thirty-five million, secured by a first lien on
6 some arena assets, secured by excess ticket
7 proceeds, with the rights, already, of the
8 franchise, the franchise having been owned only
9 by Niagara Frontier Hockey Limited Partnership,
10 a guarantee from Niagara Frontier Hockey Limited
11 Partnership up to twelve million if the
12 franchise were to be moved.

13 MR. BROWN: It was a
14 guarantee of payment.

15 THE COURT: And then as of
16 the 30th of September, 1902 -- I'm sorry, 2002,
17 there were twenty-nine point seven million owed
18 on the construction loan.

19 At that point, Fleet was not on
20 that loan, but --

21 MR. BROWN: They were.
22 They were.

23 THE COURT: Okay. All
24 right. And then Buffalo Sabres Concession, LLC,
25 borrowed thirty-two point five million from

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1 Fleet and others, secured by a first lien on
2 concession -- concession lease and some
3 concession assets and the revenues of the
4 concessions, a conditional guarantee by Niagara
5 Frontier Hockey Limited Partnership in
6 connection with a promise not to relocate, and
7 that guarantee was up to twelve million
8 something. And there was a takeout agreement by
9 SportService. And then there was a line of
10 credit of Fleet up to twelve million dollars.

11 MR. BROWN: In 1995, you
12 had the construction loan and you had the
13 concession loan. They were the two new deals.
14 The concession loan essentially put the kitchen
15 equipment in the stands in for SportService to
16 prepare and sell food in the arena.

17 There always was existing to the
18 team a line of credit, and that was a line of
19 credit to NFHLP that in 1995, then Marine
20 Midland Bank -- now HSBC -- was the lender;
21 Fleet eventually acquired that loan from HSBC
22 within a couple of years of that, and in the
23 1996/1997 period or approximately.

24 Then we roll forward to March,
25 2000.

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1 THE COURT: Yes.

2 MR. BROWN: In March,
3 2000, the construction loan, which was again
4 HSBC, Fleet and Key, was assigned to and
5 purchased by Sabres, Inc., a wholly-owned
6 indirect subsidiary of Adelphia Communications
7 Corporation.

8 THE COURT: All right.
9 Not one of the debtors here?

10 MR. BROWN: No, Your
11 Honor, but CALLC remained the obligor, which is
12 one of your debtors here.

13 THE COURT: Okay.

14 MR. THOMAS: Your Honor, in
15 the prior pleadings throughout, they have always
16 been referred to as ACC Sabres, and Sabres Inc.
17 are the same entity. In the pleadings that we
18 had to avoid confusion, they were always
19 referred to as ACC Sabres, but they and Sabres,
20 Inc., are the same group.

21 THE COURT: Okay.

22 MR. BROWN: Also in March,
23 2000, the revolver loan to the team, the NFHLP,
24 was assigned to Sabres, Inc.

25 THE COURT: Okay.

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1 MR. BROWN: There was
2 three in March, 2000, there was an agreement for
3 the assignment of the concession loan to Sabres,
4 Inc., but it was not consummated because a
5 condition could not be met, and that condition,
6 as I recall it, was the consent of SportService,
7 who was a guarantor on the loan to the
8 assignment.

9 So that brings us to April, 2003
10 before Your Honor. CALLC, a debtor in this
11 court, is still an obligor on the construction
12 loan. Its obligee is now Sabres, Inc.

13 THE COURT: All right.

14 MR. BROWN: And to effect
15 the sale of the arena and the sale of the team,
16 Sabres, Inc. in the guise of Adelphia, had to
17 consent because otherwise, those assets could
18 not have been transferred free and clear of
19 liens to Mr. Golisano.

20 THE COURT: All right. So
21 Fleet did deal with an Adelphia entity?

22 MR. SCHLANT: In the manner
23 that was described.

24 THE COURT: Yes. As
25 the -- the Adelphia entity was an obligee?

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1 MR. BROWN: But it -- I
2 don't want to speak for Fleet. HSBC, its only
3 dealing with an Adelphia entity was in March,
4 2000 in a sale of the bundle of loan rights.
5 Sabres, Inc. bought a loan --

6 THE COURT: Yes.

7 MR. BROWN: -- that had
8 been made to the Knox brothers.

9 THE COURT: All right.
10 Thank you.

11 MR. SCHLANT: And I believe
12 as to those two loans, that's the same with
13 respect to Fleet, they just sold those loans.

14 THE COURT: All right.

15 MR. SCHLANT: Fleet did have
16 a separate relationship, which we described in
17 our papers with Adelphia, that had nothing to do
18 with the Sabres.

19 THE COURT: Right.

20 MR. SCHLANT: The concession
21 loan, as it came forward, came into this case as
22 an obligation of Buffalo Sabres Concession owed
23 to Fleet.

24 THE COURT: Correct.

25 MR. SCHLANT: Fleet had

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1 guarantees and security interests supporting
2 that loan.

3 THE COURT: Correct.

4 MR. SCHLANT: And as
5 Mr. Brown described before, there was a
6 determination made at a certain point that was
7 passed by all parties as to what it would take
8 to satisfy that loan in full. And with court
9 approval and the consent of parties, including
10 Adelphia, that happened in April of 2003. And
11 at that point, Fleet released its security
12 interests and guarantees, and accepted the
13 payment that was made at that time on the
14 stipulated amount as the correct amount to pay
15 that loan in full.

16 THE COURT: All right.

17 MR. SCHLANT: And now, three
18 months later, Adelphia having been silent about
19 this before the Court in April of 2003,
20 commences litigation that's entirely
21 inconsistent with the satisfaction of those
22 loans at that time for those numbers.

23 THE COURT: You're certain
24 that there are -- that there is a cause of
25 action in the complaint that makes it clear that

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1 part of what Adelphia is seeking from Fleet
2 related specifically to the concession loan?

3 MR. SCHLANT: I'm relying on
4 Fleet's main attorneys for that understanding,
5 Levin, Lubarsky & Feigenbaum. They're a New
6 York City law firm that was retained with
7 respect to the adversary proceeding commenced by
8 Adelphia.

9 THE COURT: I recall from
10 earlier submissions, a representation by one or
11 more people that the complaint is hundreds of
12 pages long.

13 MR. SCHLANT: Yes. And
14 somewhat vague, but I believe it's their
15 understanding from an analysis of it, and I
16 could have them confirm that if the Court wants
17 that separately confirmed, that the concession
18 loan is part of that.

19 THE COURT: I don't, at
20 this point, need it separately confirmed.

21 MR. SCHLANT: Where this
22 leaves Fleet unique in this case is with claims
23 that were before this Court as claims against
24 these debtors, released based upon agreements
25 made and stipulations made by Adelphia at a time

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1 when, presumably, it knew it or its creditors'
2 committee knew this adversary proceeding was
3 about to happen, not saying a word about it;
4 Fleet relying on stated facts that would suggest
5 completely otherwise, that once it accepts this
6 payment, it is completely finished with these
7 loans and releasing its collateral and
8 guarantees at that time when it could simply
9 have refused if it knew that this was not going
10 to be payment in full on these loans.

11 Fleet, therefore, is taking the
12 same position that HSBC and Key have taken.
13 Fleet is satisfied to see the million seven paid
14 to the vendors and the smaller creditors,
15 provided that it receives a conditional credit
16 against the possibility of any liability in the
17 Adelphia adversary proceeding, and now to the
18 Sabres responses to that.

19 The Sabres assert that any claims
20 that Fleet would have in this regard arise sort
21 of derivatively of Adelphia's claims, we sort of
22 become part of the body of Adelphia claims, and
23 I oppose that and we've asserted in our papers
24 for three reasons that that is not the case.

25 One is we've cited case law to the

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1 Court that demonstrates that when they avoided
2 payment on a loan to a separate debtor is
3 returned to a third party, that the separate
4 debtor's obligation is reinstated. That's a
5 direct claim, it doesn't depend on Adelphia
6 having claim on the direct claim that arises in
7 favor of the creditor that has to return the
8 payment.

9 Second, HSBC and Fleet has
10 language in its documents that in the event of
11 avoidance, the original obligation is considered
12 unpaid to the extent of that avoidance.

13 Third, we don't believe Adelphia
14 can raid Fleet's claims in this case. This
15 would not be a knowing waiver, an intentional
16 waiver of a known right. Adelphia, in April of
17 2003, is before this Court leaving the right of
18 Fleet to assert. When Adelphia later sues it,
19 which Fleet does not know is going to happen,
20 and if Fleet has to return money based on that
21 lawsuit, that Fleet is going to be held to a
22 waiver because Adelphia is, in April of 2003,
23 waiving it for them the right to make those
24 claims back against the debtor. It can't be a
25 valid waiver because it's not a known right,

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1 Fleet has no right to expect that to happen and
2 therefore, it can't be an intentional waiver.

3 So for all those reasons, we
4 believe that Fleet has direct claims against
5 these debtors -- if it has to return money to
6 the Adelpia creditors' committee in the
7 Adelpia adversary proceeding, and therefore, in
8 this proceeding, Fleet has direct claims against
9 the debtors that should be taken into account at
10 this time, and Fleet has offered to take that
11 into account with the form of credit that we've
12 been discussing.

13 THE COURT: And who will
14 be addressing the Key Bank?

15 MR. SALOMON: Your Honor,
16 Chester Salomon for Key Bank. I'll be brief.
17 Aside from our papers and our joinders in the
18 papers of HSBC and Fleet and the arguments of
19 HSBC and Fleet counsel this morning, we really
20 don't have anything to add except this. That
21 our client, at no time, knew of the possibility
22 of litigation being brought against it by
23 Adelpia or the creditors' committee in early
24 2003. Thank you.

25 THE COURT: Thank you.

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1 Other argument from --

2 MR. THOMAS: Your Honor,
3 just very briefly. I believe the Court fully
4 understands the issues and has spent the time to
5 read the papers. But just in response, very
6 briefly, to the arguments made by Fleet.
7 Certainly not our position that any of the banks
8 waive our rights.

9 Certainly it's our position that
10 Adelphia signed a subordination agreement and
11 the result of that subordination agreement
12 adheres to the benefit of the banks in the
13 Adelphia AP and in the Sabres AP, and therefore
14 the banks will get full and adequate relief in
15 regard to that. We're not suggesting the banks
16 waive their rights; we're saying that if, in
17 fact, as a result of the actions that the
18 Adelphia debtors took in this proceeding,
19 there's a million six that could have otherwise
20 been available to the banks, the Court, at a
21 subsequent date, can resolve that issue.

22 Secondly, with regard to the issue
23 of direct claims in both HSBC's papers as well
24 as Fleet's papers, irrespective of whatever the
25 rights may be of a party who is sued for a

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1 fraudulent conveyance in the Sabres AP to
2 recover rights back and to have a claim within
3 that, that is totally unrelated to their rights
4 to assert such claims against the debtors in
5 this proceeding.

6 This loan is sold in 1999.
7 Whether it's a fraudulent conveyance or not, I
8 have no opinion, I have no way of knowing, no
9 knowledge. If it's, in fact determined, after
10 adjudication, to be a fraudulent conveyance, I'm
11 comfortable that whatever results accrue from
12 the execution of the stipulation and order in
13 this case can be adjudicated at that point as a
14 settlement.

15 Finally, with regards to the
16 debtor we have a limited purpose here and
17 suggest the Court is left with three
18 alternatives. The first, which I don't think
19 anyone here favors, is to hold the three point
20 six million dollars in place until all these
21 matters --

22 THE COURT: One point six.

23 MR. THOMAS: One point six,
24 excuse me, Your Honor, one point six million
25 dollars until all these matters are resolved.

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1 Secondly, the Court can take the middle
2 position, which is that it can allow the
3 distribution to go forward, reserve all of the
4 rights for all of the parties for another day,
5 and the third position is to adopt the position
6 of the banks and either adjudicate this today
7 or, in the alternative, since there are various
8 matters that are being adjourned and will be
9 resolved shortly, would be to put the banks and
10 the Adelpia debtors on an agreed-upon briefing
11 schedule and allow the issue of whether they're
12 entitled to a setoff today as opposed to at the
13 time of the adjudication of the cases to be
14 decided, but not to allow that issue to hold up
15 the distribution of the funds at this time.

16 THE COURT: All right.

17 MR. THOMAS: Thank you,
18 Your Honor.

19 THE COURT: Does
20 Adelpia's representative wish to be heard?

21 MR. ZINMAN: Yes. This is
22 Dan Zinman from Kasowitz, Benson, Torres &
23 Friedman. Just a few points. I believe it was
24 HSBC's counsel, I have a few comments to --
25 responses to his comments.

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1 First, we object to the
2 characterization of the so-called joint orders
3 regarding jurisdiction, as we will not have
4 dueling bankruptcy cases. The orders speak for
5 themselves. We don't believe that they are
6 necessarily as broad, should be read as broadly
7 as HSBC. Clearly, we can argue about that at
8 the appropriate time.

9 Also, any allegation that we don't
10 care what Your Honor did earlier or presumably
11 what we did in conjunction so ordered by Your
12 Honor, or rather Adelphia, not the creditors'
13 committee, but the Adelphia debtors, obviously
14 that's not true. Again, in HSBC's desire to
15 argue its case, it seems to be making this into
16 something about an insulting action, and all
17 they're doing is mischaracterizing what is, in
18 essence, a simple jurisdictional dispute between
19 their desire to have issues heard in your court
20 and our desire to have the first issues heard in
21 the first filed action in the Southern District
22 of New York. And again, we can reserve all our
23 rights to dispute all these issues in the
24 appropriate matter at the appropriate time.

25 THE COURT: Thank you.

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1 Mr. Netzer, did you have anything to add?

2 MR. NETZER: No, I'll let
3 the creditors' committee remarks stand.

4 THE COURT: All right.
5 All right. One question in my mind, in
6 connection with the argument that the procedure
7 being utilized by the debtors here in this court
8 fail -- would fail, I guess, is the answer, of
9 due process, if this Court were not to grant the
10 credit that the banks seek, raises a question in
11 my mind about due process to Adelpia if I were
12 to -- shall I say the -- whether any order that
13 adjudicated in favor of the bank's credit would
14 similarly be argued by Adelpia for one of
15 jurisdiction.

16 MR. BROWN: Your Honor,
17 this is Bill Brown, for those on the phone.
18 Your Honor, we, HSBC, consents to you and Judge
19 Gerber, if you so choose, speaking about the
20 appropriate jurisdiction of allocations here to
21 the extent that you believe it. With regard to
22 your question, however, Adelpia appeared in
23 this Court on the sale, on the plan issues, and
24 these are germane to those.

25 THE COURT: So if I

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1 understand, then, this portion of the argument,
2 the argument is that it would violate due
3 process for the Court to approve the debtor's
4 proposal unless the Court were to grant the
5 credit, but that it would not violate due
6 process for the Court to approve it on the
7 condition that the credit is granted?

8 MR. BROWN: The latter
9 point is really for the purposes of a hoped-for
10 consensual resolution. Speaking for HSBC, we
11 want to make it clear that HSBC is willing to
12 have the money released, and therefore the small
13 vendors paid, as long as to some small amount,
14 the fact that it has a claim is recognized here
15 and allowed for on a contingent basis, and
16 therefore, we would avoid, at this point, a
17 lengthy adjudication about -- or more lengthy,
18 at least, about whether the subordination is
19 apropos, or whether the distribution has to wait
20 until a later date because, for example, Your
21 Honor, in this four hundred, four hundred and
22 fifty-defendant complaint, HSBC has no other
23 involvement to all of the allegations in that
24 complaint. They all relate to lenders who lent
25 money to Adelphia. And we're not similarly

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1 situated with those people.

2 If Adelphia had come to us in some
3 fashion in January, 2003 and said, hey, we've
4 got a problem with the installment payments that
5 CALLC made to you going back to 1995, or the
6 fact that you sold the loan to Sabres Inc. in
7 2000, then HSBC and its fellow construction
8 lenders would have been in a position, in the
9 spring of 19 -- of 2003 to be the counter
10 parties with Mr. Golisano before those liens
11 were released.

12 THE COURT: Okay. But
13 those are good arguments for why you should
14 maybe, eventually, be able to reach a consensual
15 resolution of the Southern District Bankruptcy
16 Court litigation as to HSBC, in any event.

17 My immediate concern is how to get
18 this done in a way that is respectful of the
19 fact that it might -- if push were to come to
20 shove over the issue of jurisdiction to grant a
21 credit, it could require an evidentiary hearing;
22 it could require -- because it may involve
23 issues of judicial estoppel, and issues of
24 judicial estoppel sometimes involve evidentiary
25 hearings, and I would want to be respectful in

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1 what I do of the fact that while I'm certain
2 that Judge Gerber and I would be able to agree
3 on how to proceed on those issues, I do not want
4 to -- I don't want to bat heads with him. Go
5 ahead.

6 MR. BROWN: Well, Your
7 Honor has done that successfully before, and
8 Laidlaw is a prime example. And there are other
9 cases, and we're perfectly willing to allow Your
10 Honor to engage in that consideration. But on
11 that very subject, I thought that's what NFHLP's
12 adversary proceeding was for. Adelphia and its
13 creditors' committee are parties to that
14 adversary proceeding in this court; they have
15 not answered. Now they seek to be dismissed.
16 We have cross-claimed against them and so has
17 Fleet.

18 MR. THOMAS: Your Honor, in
19 response to the narrow question of due process,
20 it would be the debtor's position, we made an
21 effort to draft the order accordingly, that if
22 the distribution is approved, it's without
23 prejudice of any and all rights, remedies,
24 claims including the right to argue that the
25 Court lacks jurisdiction in regard to other

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1 matters.

2 I would also be happy to put in
3 the order, if it makes the Court more
4 comfortable, and other parties more comfortable,
5 that this is without prejudice to the bank
6 seeking the same relief requested here; that the
7 relief they have requested is not being denied
8 with prejudice in any way.

9 We're simply distributing the
10 money which I understand the banks at the end of
11 the day don't dispute, and therefore the issue
12 of whether the credit should be issued
13 immediately or shortly hereafter, can be
14 resolved and if it does take some sort of
15 evidentiary hearing, it will not hold up the
16 distribution.

17 So my view is that if the Court
18 were to grant this order, it is not necessarily
19 deciding -- it is not denying with prejudice the
20 bank's arguments or claims today; it's simply
21 deferring those to be asserted -- and they need
22 not be asserted at the time of the AP; it can be
23 asserted within two or three weeks if they wish
24 to bring an appropriate motion.

25 THE COURT: So your

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1 argument would be, then, if we forget the -- if
2 we ignore the fact that we have this stipulation
3 of dismissal pending and the debtor's motion in
4 that regard, and if we ignore the fact that
5 that's opposed by the banks and set that aside,
6 and look at this narrowly as if the only matter
7 before the Court were the matter of the
8 distribution of the funds with regard to which
9 the banks want a credit, that I can grant the
10 distribution of funds without a resolution of
11 the matter of the credit today?

12 MR. THOMAS: By reserving
13 everyone's rights and remedies and making it
14 clear that that, in no way, a decision in that
15 regard is a decision that could be in any way
16 have collateral estoppel or some sort of effect
17 that the rights that the banks have sought today
18 were in some way denied or adjudicated; simply
19 that those can be brought back, even as part of
20 the pretrial people can set dates for those to
21 come back and be heard.

22 In addition, as a practical
23 matter, as a representative of the debtors as
24 well as the creditors' committees, at that point
25 in time, we do not have to be active in that, we

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1 do not have to charge the estate for any
2 activities in that regard. That really moves it
3 to the plane of a dispute between the Adelphia
4 debtors and the banks, and our hope is to get
5 this money out, in part, I must confess, because
6 people call me every day, since --

7 THE COURT: Yes.

8 MR. THOMAS: Thank you,
9 Your Honor.

10 THE COURT: All right.
11 Does anyone else wish to make any further
12 comment? All right. I'm going to take five
13 minutes to formulate the language of a ruling.
14 I'll leave the people on the phone. We'll go
15 off the record. The speakers will be off in
16 chambers so that you can feel free to socialize
17 or whatever for five minutes.

18 (A recess was then taken.)

19 THE COURT: Please be
20 seated. Let's essentially call the roll and
21 make sure we didn't lose anyone along the way.
22 I see that we have Mr. Thomas and we have Ms.
23 Hill and Ms. Clemens, we have Mr. Brown,
24 Mr. Schlant, Miss Storie.

25 How about on the phone, do we have

1 Mr. Netzer?

2 MR. NETZER: Yes, Your

3 Honor.

4 THE COURT: Mr. Zinman?

5 MR. ZINMAN: Yes, I'm here,

6 Your Honor.

7 THE COURT: Ms. Keynes and

8 Mr. Salomon?

9 MR. SALOMON: Yes, Your

10 Honor.

11 THE COURT: Okay. This is

12 my ruling. I find that the only issue
13 appropriate for resolution today is the narrow
14 question of whether the distribution that was at
15 the heart of the plan and that was a highly
16 material element of this Court's approval of the
17 asset purchase, whether that distribution may be
18 ordered by this Court without any adjudication
19 of any other issue raised by any other party.

20 On that narrow issue, I rule that
21 there is no violation of due process and that
22 the distribution will go forward. All other
23 issues raised by any other party will be
24 addressed hereafter in accordance with due
25 process and with statutes applicable and the

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1 applicable rules, and it will be so ordered.

2 You will submit an order, Mr. Thomas?

3 MR. THOMAS: Yes, I will,
4 Your Honor. I'll certainly serve all other
5 counsel.

6 THE COURT: Thank you.

7 MR. THOMAS: May I ask a
8 procedural point?

9 THE COURT: Yes.

10 MR. THOMAS: While Your
11 Honor was absent from the bench, we noticed that
12 there was a pretrial on the same matters, but
13 everything on the pretrial was adjourned, merely
14 to set dates, and may we ask the Court, unless
15 the Court has issues to raise, may we merely set
16 dates now, instead of adjourning and going back
17 into chambers and coming back?

18 THE COURT: Sure.

19 MR. THOMAS: If it's all
20 right with other counsel.

21 THE COURT: Let's move to
22 that now. Now, the pretrial -- have counsel
23 agreed to the dates, or have counsel simply
24 agreed to address this?

25 MR. THOMAS: We were hoping

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1 Your Honor could pick a day that would be --
2 that these issues could be addressed other than
3 on the regular calendar, and unless there were
4 conflicts, we would accommodate whatever days
5 the Court has available in approximately
6 twenty-five to thirty days from now.

7 THE COURT: Now, you're
8 referring to the other issues, the motion to
9 approve the stipulation and the motion -- and
10 the opposition thereto. I granted the Fleet
11 Bank motion to intervene today, and so then we
12 had the cross motion, is it?

13 MR. BROWN: We have a
14 motion by HSBC in the adversary proceeding to
15 enforce the plan.

16 THE COURT: Right. Yes.
17 The Adelpia waiver provision in the plan, is
18 that right?

19 MR. BROWN: The avoidance
20 action waiver.

21 THE COURT: Paragraph 7
22 dot 06?

23 MR. BROWN: Yes, Your
24 Honor.

25 MR. ZINMAN: Your Honor, if

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1 I may. It's Dan Zinman from Kasowitz again. I
2 think one issue, procedural issue that needs to
3 be resolved is exactly how we're going to go
4 forward. I don't know that it's the best idea
5 to argue everything at once. I think, from my
6 point of view, I'd rather argue the juris-
7 dictional question first; if Your Honor doesn't
8 have jurisdiction, then a lot of the other
9 issues, vis-a-vis HSBC's motion for a permanent
10 injunction, would be kind of moot at that point.

11 THE COURT: Okay. I see
12 what you're saying. Now, you're signatory to
13 the stip that would dismiss Adelpia out.

14 MR. ZINMAN: No, I am not.
15 The creditor's committee I don't believe is
16 actually a signatory to that, although we are a
17 beneficiary to that.

18 THE COURT: Okay.

19 MR. THOMAS: Your Honor, we
20 have no objection that if the Court were to set
21 a date that parties, that other parties can
22 bring within the rules of this court for timing
23 whatever motions they feel are appropriate at
24 that time as well.

25 THE COURT: That's a good

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1 idea. Let's get everything out on the table. I
2 will continue my earlier pretrial order, which
3 tolled the running of all limitations, periods
4 and so forth, pending another date that we
5 should fix now for any other -- for the purpose
6 of submissions of anything else that people feel
7 needs to be on the table. And I'm not here
8 referring to briefs, because I don't think we
9 should be -- we will be briefing the whole
10 universe of issues here if we don't first decide
11 what is appropriate to take up here, and in what
12 sequence, so I'm not looking for briefs. I just
13 want to see if we need any more moving papers.

14 MR. ZINMAN: Your Honor, I
15 assume that would not include our motion to
16 dismiss --

17 THE COURT: You're
18 assuming that it would not include it?

19 MR. ZINMAN: Yeah. If Your
20 Honor did want to brief that --

21 THE COURT: Well, our
22 local rules don't require, perhaps unlike many
23 of the local rules that you're used to, don't
24 require a brief in connection with such motions.
25 Here regularly, the motion to dismiss, or the

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1 motion for summary judgment is made and we don't
2 get the briefing until after we've had an
3 initial return date on the motion, if it's not
4 decided what needs to be briefed.

5 So no, I specifically would like a
6 motion, if that's your intention, I'd like a
7 motion to dismiss. I want the moving papers on
8 the table, I just don't want -- I don't want
9 anyone to brief these issues until we see and
10 have on the table all of the conflicting
11 theories, okay.

12 So the question that I have is,
13 how long will it take -- what date would be
14 comfortable for everyone to have figured out
15 what motions they need to make and so forth,
16 recognizing that the opportunity to brief will
17 come later when I decide what needs to be
18 briefed and in what sequence. Do you think
19 thirty days or sixty days? I don't know, what
20 do you think?

21 MR. THOMAS: The week of
22 May 3rd would be adequate for me; that's thirty
23 days out, roughly.

24 MR. BROWN: That's
25 absolutely fine, Your Honor. I'd like to join

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1 the issue.

2 THE COURT: Sure.

3 MR. ZINMAN: Your Honor, if
4 I may. Again, Dan Zinman. My other question in
5 that regard is I have had long-standing vacation
6 plans for the last week in April. So if we
7 could push it back one more week, I know my
8 family would be certainly grateful.

9 THE COURT: That's no
10 problem at all. Why don't we, then, fix -- why
11 don't we say, then, that the deadline -- I want
12 to be careful that I don't accidentally create
13 problems if someone comes up with something
14 later.

15 Let me ask that all the issues
16 that people believe are appropriate to have on
17 the table at the earlier stages, at the earliest
18 stages, should be filed and served no later than
19 noon on Thursday, May the 13th, and then we will
20 fix Thursday, May the 27th --

21 MR. ZINMAN: I'm sorry,
22 what time on the 20th?

23 THE COURT: I didn't say
24 the 20th.

25 MR. THOMAS: 27th. Two

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1 seven.

2 MR. ZINMAN: I'm sorry.

3 THE COURT: The 27th. So
4 I'd like to change that to Tuesday, May the
5 25th, Tuesday, May the 25th at ten A.M. would be
6 the return date and time here, in court, return
7 date and time to which I'm adjourning everything
8 that's pending and which you may use as the
9 return date for these other things. But do get
10 them filed and served by noon on the, what did I
11 say, the 13th? So that you have ample
12 opportunity to have some back and forth about
13 what you see as people file these things.

14 MR. THOMAS: Your Honor,
15 consistent with our earlier statement, I believe
16 that there would be no appearance by telephone
17 at that time?

18 THE COURT: On the 13th?

19 MR. THOMAS: On the 25th.

20 THE COURT: Oh, on the
21 25th. I would prefer not. I think it's --

22 MR. BROWN: I agree.

23 THE COURT: The reason
24 that I shifted it from the 27th to the 25th is
25 so that I can block out the whole day, and I

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1 would hope that if need be, people could caucus
2 right here on the premises of the court and I'm
3 going to give you the whole day in hopes that we
4 can have a resolution of as much as is possible
5 on that day. Mr. Brown?

6 MR. BROWN: I'm fully in
7 favor of that, Your Honor. I think it's a
8 terrific idea.

9 THE COURT: Okay. So
10 you'll have my whole day on the 25th of May,
11 beginning at ten o'clock.

12 CHRISTINE KLIMKO: Can I just
13 clarify?

14 THE COURT: Yes. Go
15 ahead.

16 CHRISTINE KLIMKO: This is going
17 to be the HSBC motion on the 7 point 06?

18 THE COURT: All the
19 pending motions, yes.

20 CHRISTINE KLIMKO: And the
21 approval of the stip.

22 THE COURT: That's right.
23 Those are all going to the 25th at ten.

24 MR. THOMAS: We ask that
25 the pretrial be adjourned to the same date.

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1 THE COURT: The pretrial
2 is adjourned. All time limits and limitations
3 with regard to whatever it was that I extended
4 before, I think there were -- I don't remember
5 why that was important, but I remember extending
6 it all to a pretrial, and they are similarly
7 extended.

8 MR. THOMAS: Certain
9 parties haven't answered in reliance on my
10 submission, they would be dismissed.

11 THE COURT: So all of
12 those time limitations and periods are extended
13 to that date and time.

14 MR. ZINMAN: Your Honor,
15 again, Dan Zinman. I apologize for my lack of
16 clarity with your practice --

17 THE COURT: Sure.

18 MR. ZINMAN: -- in your
19 court. So we would file motions, but not
20 briefs, by the 13th?

21 THE COURT: Correct.

22 MR. ZINMAN: And so would
23 there be argument on the 25th, or --

24 THE COURT: Yes.

25 MR. ZINMAN: I'm not sure

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1 what would happen.

2 THE COURT: There would be
3 argument on the 25th. At least scheduling. If
4 you think -- the practice in our court,
5 typically, is for parties to return -- to come
6 back on an initial return date, let me know
7 what's really at issue. I've read the papers at
8 that point, I can ask questions, I can seek
9 clarification, we can agree on the way to
10 proceed on the issues and then I can order
11 briefing on what makes the most sense. That's
12 the way we usually proceed.

13 MR. ZINMAN: I understand
14 now. Thank you.

15 THE COURT: You're
16 welcome. Now, sometimes with representation of
17 this high quality, sometimes counsel -- I'm not
18 prohibiting briefs, but if you think that it's
19 very -- that it would be useful to you to have
20 other people see the strength of your argument,
21 fine, but I don't expect anyone to file
22 responsive briefs. And I do not want people
23 feeling, if someone were to submit a brief
24 because they think it would be useful to see the
25 strength of the legal argument, I don't want

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1 someone saying, oh, gee whiz, they briefed that
2 question, so now I'm going to have to brief it.
3 No, that is not the case.

4 MR. ZINMAN: I understand.

5 THE COURT: Okay? Great.
6 Yes, Mr. Schlant?

7 MR. SCHLANT: I'm sorry, I
8 know everybody was about to go. We had one
9 thing that was adjourned to today from
10 previously.

11 THE COURT: What was that?

12 MR. SCHLANT: It was the
13 motion of Fleet to enlarge the time to file its
14 proofs of claim.

15 THE COURT: Oh, that's
16 right. That's extended to the same date and
17 time.

18 MR. SCHLANT: Okay.

19 THE COURT: Is that right?

20 MR. SCHLANT: Well, what we
21 had discussed the last time was there was no
22 opposition below the level of -- there was no
23 opposition by anyone that would not participate
24 in the segregated account if it were allowed to
25 be disbursed, and that if we reached a

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1 resolution on allowing that to be disbursed,
2 then it would lead to a different way of looking
3 at the Fleet motion, and my understanding was at
4 this point, since the segregated account is
5 going to be paid out, there's really no
6 opposition to it.

7 THE COURT: I tried to
8 avoid that question. I think that probably I
9 have overruled on the objection because the
10 limited objections to disbursement said there
11 would be no objection if we got the credit. I'm
12 saying that's not appropriately before me today
13 and that I can go ahead and order the
14 disbursement without granting that, so I don't
15 know how you want to characterize it. It's fine
16 with me to characterize it as approving
17 disbursement over the objection of the banks.
18 You can decide whether that's what you want
19 to --

20 MR. THOMAS: Mr. Schlant
21 and I will discuss it. He's raising a slightly
22 different point, Your Honor. His suggestion is
23 that having had the Court decide to make the
24 distribution free and clear of claims --

25 THE COURT: Then there was

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1 no opposition.

2 MR. THOMAS: -- then in
3 effect it's kind of moot, if it's important for
4 other reasons that Fleet have filed proofs of
5 claim, albeit late, as long as from the debtor's
6 point of view they don't interfere with the
7 distribution, then --

8 THE COURT: You're right.

9 MR. THOMAS: That's what I
10 believe the Court --

11 THE COURT: You're right.
12 I remember being briefly surprised that there
13 was no objection, but then I remembered that
14 what's going on up here is, vis-a-vis the one
15 point six million was very small potatoes in
16 comparison to the regards in which the banks are
17 similarly situated elsewhere.

18 MR. THOMAS: Mr. Schlant
19 and I will prepare an order and circulate it.
20 If none of the parties in interest have an
21 objection --

22 THE COURT: Then it's
23 granted.

24 MR. THOMAS: If they have a
25 claim, as long as it comes after the order

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1 prohibiting distribution, then the debtors don't
2 object and I don't believe Mr. Brown objects.

3 THE COURT: So the motion
4 to extend the time is granted, subject to the
5 language of an order to be circulated.

6 MR. SCHLANT: Thank you.

7 THE COURT: Among those
8 who want it. Okay. We're off the record.

9 (The proceedings concluded at
10 11:35 A.M.)
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1 I certify that the foregoing is a correct
2 transcription of the proceedings recorded by me
3 in this matter.
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9 _____
10 BARBARA BUYERS, CSR, RPR
11 Notary Public.
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